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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 23280 | 7590 | 06/02/2009 | | |
| Davidson, Davidson & Kappel, LLC 485 7th Avenue 14th Floor New York, NY 10018 | | | EXAMINER ONEILL, KARIE AMBER | |
| | | | ART UNIT | PAPER NUMBER |
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action
Before the Filing of an Appeal Brief

Application No.

10/578,461

Applicant(s)

SCHWAB, CLEMENS

Examiner

Karie O'Neill

Art Unit

1795

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 15 May 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 5-14.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

/Karie O'Neill/
AU 1795

/Mark Ruthkosky/
Primary Examiner, Art Unit 1795

Continuation of 11, does NOT place the application in condition for allowance because: Applicants arguments submitted on May 15, 2009, are not persuasive. Applicant argues that "Honda et al. in no way discloses the requirement of claim 5 of "an adsorption accumulator assigned to the fuel cell unit and forming a heat store adapted to release heat when adsorbing the fuel cell waste products. Honda et al. completely fails to teach or disclose such a relationship between fuel cell 2 and adsorber 5 and does not even mention any use at all for waste products of fuel cell 2."

Honda et al. discloses in paragraph 0020, the adsorber (5) being assigned to the fuel cell (2) and forming a heat store in heat exchange section (51) which is thermally connected to the adsorption accumulator (5). It is also noted that the phrase "adapted to release heat when adsorbing the fuel cell waste products" is considered functional language which imparts intended use to the structural features of the claim. Therefore, the claim is rejected with regard to the structural limitations of the adsorption accumulator and no patentable weight is given to the "adapted to" limitations.

Applicant argues that "Honda et al. not disclose the requirements of claim 5 of "a first line connected to the fuel cell unit discharging the fuel cell waste products from the fuel cell unit" and "a second line connecting the first line to the adsorption accumulator for feeding the fuel cell waste products to the adsorption accumulator." The Office Action does not even attempt to point out in Honda et al. where the "first line" or the "second line" of claim 5 are disclosed in Honda et al."

The terms "first line" and "second line" are broad limitations that are met by the prior art. MPEP 2106 states, the Examiner is to give claims their broadest reasonable interpretation in light of the supporting disclosure. In the office action it is noted that the "first line" is connected from the fuel cell (2) to pump (40) and the "second line" is the line that continues from pump (40) to the adsorber (5). The fuel cell waste is the water that is generated by the reactants in the fuel cell and is later pumped out of the fuel cell by pump (40) and flows into the adsorbent chamber (52) of the adsorber (5) (paragraphs 0018-0019).

Applicant argues that the limitations discussed above are structural limitations; i.e., the adsorption accumulator "adapted to release heat when adsorbing the fuel cell waste products," the first line, and second line.

These structural limitations have been discussed in the office action dated March 23, 2009 on page 3 and in the paragraphs above.

Applicant argues that, "the three-way-type selector valve 41, which the Office Action alleges corresponds to the "actuator" of claim 12, is a part of hydraulic circuit A of Honda et al. and thus is in no way adapted to interact with the claimed "first line" and the "second line" as required by claim 12."

As stated above, that the "first line" is connected from the fuel cell (2) to pump (40) and the "second line" is the line that continues from pump (40) to the adsorber (5). The three-way valve (41) is located between the fuel cell (2) and the adsorber (5) and interacts with the "first line" and the "second line", as required by the claim limitation.

Applicant argues that "the three-way-type selector valve 42, which the Office Action alleges corresponds to the "second actuator" of claim 13, is adapted to pass heat exchanging fluid from heat exchanging part 51 to fuel cell 2 and thus is not arranged with the claimed system as required by claim 13."

The intended use of the structural features of the claims are not given patentable weight. Therefore, the three-way-type selector valve (42), which acts as a second actuator, is present in the fuel cell system, as required by the claims.

Finally, it is respectfully submitted by Applicant that, "Honda et al. does not disclose the step of claim 7 of "when the fuel cell system is starting up, heating coolant in the cooling circuit via the heat exchanger using heat stored in the adsorption accumulator, with the fuel cell waste products being fed to the adsorption accumulator at the same time, the fuel cell waste products including waste gas." Honda et al. in no way discloses feeding any waste products from fuel cell 2 to adsorber 5. As discussed above with respect to the corresponding apparatus claim, Honda et al. does not even mention any use at all for waste products of fuel cell 2."

As stated above, the waste product being fed from the fuel cell (2) to the adsorber (5) is the water generated by the reactants of the fuel cell and is later pumped out of the fuel cell by pump (40) and flows into the adsorbent chamber (52) of the adsorber (5) (paragraphs 0018-0019).